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15 Attorneys for Plaintiff, Juana Reyes

16 **UNITED STATES DISTRICT COURT**
17 **SOUTHERN DISTRICT OF CALIFORNIA**

18 JUANA REYES,
19 Plaintiff,
20 v.
21 CONSUMER RECOVERY
22 ASSOCIATES, LLC,
23 Defendant.

24 Case No: 11CV1299 JM BGS

25 **COMPLAINT FOR VIOLATIONS
26 OF THE FEDERAL FAIR DEBT
27 COLLECTION PRACTICES ACT
AND VIOLATIONS OF THE
ROSENTHAL ACT**

28 **INTRODUCTION**

29 1. Plaintiff Juana Reyes, through her counsel, brings this action to
30 challenge the acts of Consumer Recovery Associates, LLC (hereinafter "CRA")
31 regarding attempts by CRA to unlawfully and abusively collect a debt allegedly owed
32 by Plaintiff, and this conduct caused Plaintiff damages.

33 2. Plaintiff makes these allegations on information and belief, with the
34 exception of those allegations that pertain to a plaintiff, or to a plaintiff's counsel,
35 which Plaintiff alleges on personal knowledge.

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1 3. While many violations are described below with specificity, this
2 Complaint alleges violations of the statutes cited in their entirety.

3 4. Any violations by Defendants were knowing, willful, and intentional,
4 and Defendants did not maintain procedures reasonably adapted to avoid any such
5 violation.

JURISDICTION AND VENUE

7 5. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331, 15 U.S.C.
8 § 1692(k), and 28 U.S.C. § 1367 for supplemental state claims.

9 6. This action arises out of Defendant's violations of the Fair Debt
10 Collection Practices Act, 15 U.S.C. §§ 1692 et seq. ("FDCPA") and the Rosenthal
11 Fair Debt Collection Practices Act, California Civil Code §§ 1788-1788.32
12 ("Rosenthal Act").

13 7. As CRA does business in the State of California, and committed the acts
14 that form the basis for this suit with the intent to cause effects in the State of
15 California, this Court has personal jurisdiction over CRA for purposes of this action.

16 || 8. Venue is proper pursuant to 28 U.S.C. § 1391.

PARTIES

18 9. Plaintiff is a natural person, an adult, and resides in San Diego County,
19 California.

20 10. Plaintiff is informed and believes and thereon alleges that Defendant
21 CRA is a Virginia limited liability company, doing business in the State of California.

22 11. Defendant CRA is a person who uses an instrumentality of interstate
23 commerce or the mails in a business, the principal purpose of which is the collection
24 of debts, or who regularly collects or attempts to collect, directly or indirectly, debts
25 owed or due or asserted to be owed or due another and is therefore a debt collector as
26 that phrase is defined by 15 U.S.C. § 1692a(6).

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12. Defendant CRA, in the ordinary course of business, regularly, on behalf of himself, herself, or others, engages in debt collection as that term is defined by California Civil Code § 1788.2(b), is therefore a debt collector as that term is defined by California Civil Code § 1788.2(c).

13. Defendant CRA claims that Plaintiff is obligated to pay a debt, and therefore Plaintiff is a “consumer” as that term is defined by 15 U.S.C. § 1692a(3).

14. Plaintiff is a natural person from whom a debt collector sought to collect a consumer debt which was due and owing or alleged to be due and owing from Plaintiff, and is a “debtor” as that term is defined by California Civil Code § 1788.2(h).

15. This case involves money, property or their equivalent, due or owing or alleged to be due or owing from a natural person by reason of a consumer credit transaction. As such, this action arises out of a consumer debt and "consumer credit" as those terms are defined by Cal. Civ. Code § 1788.2(f).

FACTS COMMON TO ALL CAUSES OF ACTION

16. On or about June 15, 2010, Defendant CRA contacted Plaintiff by telephone in an attempt to collect a consumer debt, in particular, Citibank account number 4621206010292559.

17. These financial obligations were primarily for personal, family or household purposes and were therefore a “debt” as that term is defined at 15 U.S.C. §1692a(5).

18. These alleged obligations were money, property, or their equivalent, which is due or owing, or alleged to be due or owing, from a natural person to another person and are therefore a “debt” as that term is defined by California Civil Code §1788.2(d), and a “consumer debt” as that term is defined by California Civil Code §1788.2(f).

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1 19. CRA claimed that Plaintiff earlier owed a debt to Citibank, based on
2 account number 4621206010292559, and that CRA now owned this debt, or was
3 otherwise entitled to collect money on this debt to Citibank.

4 20. In this telephone call, CRA's agent or employee told Ms. Reyes that the
5 last payment made on the account above was in 2002.

6 21. CRA's agent or employee told Ms. Reyes that CRA was going to file suit
7 against Ms. Reyes if she did not make immediate settlement arrangements and allow
8 CRA to electronically withdraw payments from Ms. Reyes' bank account.

9 22. CRA's agent or employee told Ms. Reyes that he knew she owed
10 medical debts, that he knew where she worked, and her new address, and he now had
11 her new telephone number.

12 23. Ms. Reyes, under duress, agreed to pay CRA to avoid the threatened
13 lawsuit, and a possible wage garnishment.

14 24. Later that same day, in an attempt to re-negotiate with CRA, Ms. Reyes
15 called CRA again and asked if CRA would really file suit if Ms. Reyes did not pay.

16 25. CRA's agent or employee stated that "yes, we will take further action" if
17 Ms. Reyes did not pay, and did nothing to deny his earlier statement that CRA would
18 file suit.

19 26. On that same day, CRA sent Plaintiff a letter in an attempt to collect the
20 same consumer debt.

21 27. CRA did not, at any point, provide Plaintiff with the written disclosures
22 of Plaintiff's right to verification of the above debt that are required by the Fair Debt
23 Collection Practices Act, or FDCPA, at 15 USC 1692g.

24 28. Ms. Reyes, who was unable to pay the amounts she had agreed to pay
25 under duress, closed her bank account.

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1 29. CRA's agent or employee then called Ms. Reyes and left her a message
2 stating that "you had talked to my office a little while back in regards to this, I'm
3 now being asked to make a decision on this, so I maybe just wanted to speak to you
4 prior to that."

5 30. Based on her past conversations with this agent or employee of CRA,
6 Ms. Reyes believed that the decision this agent or employee was supposedly being
7 asked to make was whether or not to file suit against Ms. Reyes.

8 **ALLEGATIONS SPECIFIC TO CERTAIN CAUSES OF ACTION**

9 **FIRST CLAIM FOR RELIEF**

10 **(Violations of the FDCPA by CRA)**

11 31. Plaintiff re-alleges and incorporates herein by reference the allegations
12 contained in the paragraphs above.

13 32. Defendant CRA violated the FDCPA. Defendant's violations include,
14 but are not limited to the following:

- 15 a. *15 U.S.C. §1692e(2)* by misrepresenting the legal status of a debt;
- 16 b. *15 U.S.C. §1692e(5)* by threatening to take an action that cannot
17 legally be taken or was not intended to be taken; and
- 18 c. *15 U.S.C. §1692g* by failing to provide disclosure of Plaintiff's
19 right to dispute a debt and request verification.

20 33. Plaintiff is entitled to actual damages sustained as a result of Defendant's
21 conduct, in an amount according to proof; to statutory damages of \$1,000; costs of
22 the action; and reasonable attorney's fees, all pursuant to *15 U.S.C. §1692k*.

23 **SECOND CLAIM FOR RELIEF**

24 **(Claim for violations of the Rosenthal Act by CRA)**

25 34. Plaintiff repeats, re-alleges, and incorporates by reference all the
26 allegations contained in the paragraphs above.

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35. Based on information and belief, Defendant CRA's acts and omissions violated *California Civil Code* § 1788 *et seq.*, including, but not limited to the following sections: *California Civil Code* § 1788.17.

36. Based on information and belief, Defendant's violations of *California Civil Code* § 1788.17, which incorporates several of the provisions of the FDCPA, include, but are not limited to, the following: Defendant's violations include, but are not limited to the *following*:

- a. *15 U.S.C. §1692e(2)* by misrepresenting the legal status of a debt;
- b. *15 U.S.C. §1692e(5)* by threatening to take an action that cannot legally be taken or was not intended to be taken; and
- c. *15 U.S.C. §1692g* by failing to provide disclosure of Plaintiff's right to dispute a debt and request verification.

37. Defendant's violations of the Rosenthal Act were willful and knowing, thereby entitling Plaintiff to statutory damages pursuant to *Civil Code* § 1788.30(b).

38. As a proximate result of the violations of the Rosenthal Act committed by Defendant, Plaintiff is entitled to any actual damages pursuant to California Civil Code § 1788.30(a); statutory damages in an amount up to \$1,000.00 each pursuant to California Civil Code § 1788.30(b); and, reasonable attorney's fees and costs pursuant to California Civil Code § 1788.30(c) from Defendant.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against Defendant CRA, and pray for the following relief:

1. An award of actual damages pursuant to 15 U.S.C. § 1692k(a)(1) against Defendants CRA and for the Plaintiff;

2. An award of statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A) against Defendants CRA and for the Plaintiff;

3. An award of actual damages pursuant to California Civil Code § 1788.30(a) against Defendants CRA and for Plaintiff;

1 4. An award of statutory damages of \$1,000.00 pursuant to California Civil
2 Code § 1788.30(b) against Defendants CRA and for Plaintiff;

3 5. An award of costs of litigation and reasonable attorney's fees, pursuant
4 to 15 U.S.C. § 1692k(a)(3) and California Civil Code § 1788.30(c) against Defendant
5 CRA; and

6. Such other and further relief this court may deem just and proper.

0 | Dated: June 14, 2011

Respectfully submitted,

Stephen G. Recordon
Attorney for Plaintiffs
E-mail: sgrecordon@aol.com

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

JUANA REYES

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Stephen G. Recordon (CSB 91401) 225 Broadway, Ste. 1900, San
Diego, CA 92101 (619) 232-1717

DEFENDANTS

CONSUMER RECOVERY ASSOCIATES, LLC

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

'11CV1299 JM BGS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 440 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	SOCIAL SECURITY	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 861 HIA (1395f)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 390 Other	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 510 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	LABOR	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 865 RSI (405(g))	<input checked="" type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	FEDERAL TAX SUITS	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act		<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	IMMIGRATION		<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 462 Naturalization Application		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee		<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 465 Other Immigration Actions		

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7

Appeal to District Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 USC 1692
Brief description of cause:
Damages for violation of the Fair Debt Collection Practices Act and for related State Law Claims

VI. CAUSE OF ACTION

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE

06/14/2011

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFF JUDGE MAG. JUDGE